

c.) Remarks:

Reconsideration of the double patenting rejection of claim 16 is requested. This claim has been rejected on the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3, and 4 of applicant's patent No. 6,651, 384. These three claims of the patent contain nothing corresponding to that part of claim 16 of the instant application reciting "each said flange having a first flange section extending laterally of the nursery tray . . . with a row of indexing apertures passing therethrough . . . the rows of indexing apertures in said first flange sections being substantially coplanar." Claim 1 of the patent requires "the thickness of the material containing said indexing apertures [to be] greater than that of said thinner zones of said sheet prior to the forming of said tray", a characteristic having no counterpart in claim 16. Since each of claims 3 and 4 of the patent depends, ultimately, on claim 1 of the patent, each of claims 3 and 4 includes the limitation relating to the provision of the thicker zones prior to the forming of the tray. This limitation cannot be ignored in considering the question of double patenting. Since this limitation is a specific limitation not present in claim 16 of this application, it is respectfully submitted that the double patenting rejection must be reconsidered and withdrawn. Such action is requested.

The recitation of claim 16 as being anticipated by Nicholson also is respectfully traversed. Claim 16 has been amended to specify that each of the flanges, at two opposite edges of the tray has a first flange section, and such first flange section is required to extend laterally of the nursery tray and to be one of the thicker zones with a row of indexing apertures passing therethrough. This revision of claim 1 should overcome the indefiniteness referred to by the examiner. It also clarifies the claims.

Further, the claim also requires the rows of indexing apertures in the first flange sections to be substantially coplanar. In Nicholson, the parts of the tray which extend laterally of the nursery tray and form a thicker zone are the short, horizontal portions shown at the upper left-hand end in Figure 2, and the corresponding part at the opposite side of the tray.

This flange, however, does not have any indexing apertures passing therethrough. Instead, the indexing apertures 22 are in the downwardly depending flange 18. Thus, not only do the short, horizontal edges of the upper ends of the flanges 18 not include indexing apertures therein, but also the presence of the apertures 22 in the downwardly depending flanges 18 positively precludes their being substantially coplanar.

It is fundamental that, to be anticipated, each and every element set forth in a claim must be found, either expressly or inherently, in a single prior art reference and such elements must be arranged as required by the claim. See Section 2131 of the Manual of Patent Examining Procedure (MPEP). Although there are some circumstances in which an anticipation rejection may be based on multiple references, as is set forth in Section 2131.01, MPEP, these circumstances are not applicable in the present case because only a single reference, Nicholson, has been relied upon by the examiner in support of the anticipation rejection.

As is set forth above, there are several limitations or elements recited in claim 16 which are not present, either specifically or inherently, in Nicholson. In fact, rearranging of the Nicholson construction in such manner as to enable the indexing apertures at opposite sides of the tray to be coplanar with one another would constitute a significant and completely unsuggested reconstruction of the Nicholson construction.

Under these circumstances, therefore, it is respectfully submitted that the anticipation rejection of claim 16 should be withdrawn.

The rejection of claim 17 as being unpatentable over Nicholson in view of Kuben also is respectfully traversed. It has been demonstrated above how claim 16 distinguishes over Nicholson. There is nothing in Kuben which even remotely suggests the modification of Nicholson which would be required to arrive at a construction the same as or the equivalent of that set forth in claim 16. Thus, even if the disclosure of Kuben is relied upon for the subject matter referred to by the examiner, the subject matter of claim 16 discussed above still would be lacking. Under the circumstances, therefore, it is respectfully submitted that the rejection of

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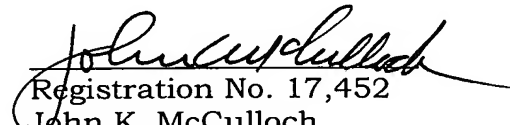
claim 17 as being unpatentable over Nicholson in view of Kuben should be reconsidered and withdrawn. Such action is requested.

It is believed that this application now is in condition for formal allowance. Such action is requested.

The Office is authorized to charge or refund any fee deficiency or excess to Deposit Account No. 50-2676.

Respectfully submitted,

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